

Before the
Administrative Hearing Commission
State of Missouri



DIRECTOR OF DEPARTMENT
OF PUBLIC SAFETY,

Petitioner,

vs.

CHRISTOPHER R. MCKEE,

Respondent.

No. 13-1876 PO

DECISION

Christopher R. McKee is subject to discipline because he misrepresented material facts for the purpose of obtaining a peace officer commission.

Procedure

On October 25, 2013, the Director filed a complaint seeking to discipline McKee's peace officer license. McKee was served by certified mail with the complaint and our notice of complaint/notice of hearing on November 1, 2013. He filed an answer on December 2, 2013.

The Director filed a motion for summary decision on December 17, 2013. We notified McKee that he should file any response by January 9, 2014, but he filed nothing in response to the Director's motion. By order dated March 6, 2014, we denied the motion.

We held a hearing on April 10, 2014. Assistant Attorney General Curtis Schube represented the Director. Neither McKee nor anyone representing him appeared. Our court

reporter filed the transcript on the date of the hearing; therefore, the case became ready for our decision on April 10, 2014.

Findings of Fact

1. McKee holds a peace officer license issued by the Director that has been current and active since May 31, 2011.

2. On May 22, 1999, McKee was arrested for the crimes of driving under the influence and minor in possession.

3. On June 18, 1999, McKee pled guilty in the municipal court of Benton County, Arkansas, to the crimes of driving under the influence and minor in possession in violation of Arkansas Code § 5-65-303 and § 3-3-203, Supp. 1999, respectively. In connection with those guilty pleas, he was assessed a \$300 fine and \$150 in costs, and his driver's license was suspended for 120 days.

4. On June 13, 2000, in the District Court of Benton County, Arkansas, McKee was convicted of driving while intoxicated, first offense, in violation of Arkansas Code § 5-65-103, Supp. 2000. He was sentenced to fourteen days' incarceration, which was suspended in lieu of sixteen hours of community service and six months of counseling. He was assessed a fine of \$450 and \$300 in costs.

5. McKee submitted a "Missouri Peace Officer License Legal Questionnaire" to the Director in 2010. On it, he was asked, "Have you ever been arrested for, or charged with, any criminal offense?" McKee disclosed two charges against him in 2004 that were dismissed. He did not disclose the three convictions set forth above.

Conclusions of Law

We have jurisdiction to decide this case. § 590.080.2.¹ The Director has the burden of proving by a preponderance of the evidence that McKee has committed an act for which the law allows discipline. *See, Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012) (dental licensing board demonstrates “cause” to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Id.* at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

The Director alleges there is cause for discipline under § 590.080:

1. The director shall have cause to discipline any peace officer licensee who:

* * *

- (4) Has caused a material fact to be misrepresented for the purpose of obtaining or retaining a peace officer commission or any license issued pursuant to this chapter[.]

Neither “material” nor “misrepresent” is defined in the statute. The dictionary definition of “material” is “having real importance or great consequences[.]” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 765 (11th ed. 2004). We agree that a prospective licensee’s criminal history is material. But “misrepresentation is generally defined as a falsehood or untruth made with the intent of deceit rather than inadvertent mistake.” *Kerwin v. Missouri Dental Bd.*, 375 S.W.3d 219, 229 -230 (Mo.App. W.D., 2012) (*quoting Hernandez v. State Bd. of Registration for the Healing Arts*, 936 S.W.2d 894, 899 n. 3 (Mo.App. W.D.1997)). In order to find that McKee is subject to discipline under § 590.080.2(4), we must find that he intentionally misrepresented his criminal history on his license application.

¹ Statutory citations are to the RSMo Supp. 2013.

In McKee's answer, he denies the allegation that he intentionally misrepresented material facts to obtain his peace officer license. He states that the offenses occurred eleven years before he applied for his peace officer license, and he had simply forgotten them. He admits to "messaging up," but says his error was not intentional.

We may infer the requisite mental state from the conduct of the licensee "in light of all surrounding circumstances." *Duncan v. Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs*, 744 S.W.2d 524, 533 (Mo. App., E.D. 1988). But we denied the Director's motion for summary decision because he had presented no evidence – not even a statement of uncontroverted facts – to establish McKee's mental state. In light of McKee's answer, there was a genuine dispute as to his mental state at the time he applied for his peace officer license. In our previous order, we stated:

There are times in which we must infer a licensee's mental state in light of surrounding circumstances. But to do so at this point in this case would be premature. Whether McKee intentionally misrepresented his criminal history when he completed his license application is the disputed issue in this case. He has denied doing so, and the Director has presented no evidence to establish that he did. His credibility may be a deciding factor. Under these circumstances, it is inappropriate to grant the Director's motion.

While it would have been "premature" to draw inferences regarding McKee's mental state at the summary decision stage, that is no longer the case.

At the hearing, the Director argued that it was not credible that McKee simply forgot the arrests and charges leading to these convictions. In connection with the first two, he was arrested, assessed a fine and costs of \$450, and his license was suspended for 120 days. After the third conviction, for driving while intoxicated, he was tried and found guilty, and was assessed a fine and costs totaling \$750. Finally, the Director argued that it was unlikely that McKee would remember two charges that did not result in convictions and disclose those on his application, but forget the three that resulted in convictions with sizable fines.

We agree with the Director. When we consider “the surrounding circumstances,” we think it most unlikely that McKee simply forgot to include the three convictions at issue on his peace officer application. We consider also the fact that McKee had the opportunity to appear and present evidence to support his position but did not do so. We find the Director has proved, by a preponderance of the evidence, that McKee misrepresented material facts for the purpose of obtaining a peace officer commission.

Summary

McKee’s license is subject to discipline under § 590.080.1(4).

SO ORDERED on April 24, 2014.

\s\ Karen A. Winn
KAREN A. WINN
Commissioner